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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

LOUIE PAUL LUERA, JR.,

Defendant and Appellant.

F058170

(Super. Ct. No. 09CM0520)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Kings County. Thomas DeSantos, Judge.

Rex Williams, under appointment by the Court of Appeal, for Defendant and Appellant.

Office of the State Attorney General, Sacramento, California, for Plaintiff and Respondent.

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* Before Wiseman, Acting P.J., Cornell, J., and Gomes, J.

STATEMENT OF THE CASE

On May 20, 2009, appellant, Louie Paul Luera, Jr., was charged in an amended information with unlawful possession of a dagger (Pen. Code, § 12020, subd. (a)(4), count one),¹ being under the influence of a controlled substance (Health & Saf. Code, § 11550, subd. (a), count two), possession of narcotics paraphernalia (Health & Saf. Code, § 11364, count three), and giving a false identity to a peace officer (§ 148.9, subd. (a), count four). There were also allegations that appellant had a prior serious felony conviction within the meaning of the three strikes law (§§ 667, subds. (b)-(i), 1170.12, subds. (a)-(d)) and had served three prior prison terms within the meaning of section 667.5, subdivision (b).

On May 20, 2009, appellant waived his constitutional rights pursuant to *Boykin/Tahl*.² The court advised appellant of the consequences of admitting the allegations. The prosecutor set forth the factual basis for appellant's plea which was that he was found on March 4, 2009, with a folding knife with the blade locked and taped into the open position. Appellant had a prior serious felony conviction for first degree burglary in 1991. Appellant served prior prison terms in 1991, 1997, and 2005 within the meaning of section 667.5, subdivision (b). Appellant was also found in possession of narcotics paraphernalia and being under the influence of a controlled substance and he gave the investigator a false name and date of birth. Appellant accepted the underlying factual basis for his plea as set forth by the prosecutor.

Appellant pled guilty to all four counts. Appellant admitted the prior serious felony conviction and the three prior prison term enhancements. Appellant waived his right to appeal. On June 18, 2009, the trial court sentenced appellant to the midterm of

¹ Unless otherwise indicated, all statutory references are to the Penal Code.

² *Boykin v. Alabama* (1969) 395 U.S. 238; *In re Tahl* (1969) 1 Cal.3d 122.

two years which was doubled to four years pursuant to the three strikes law. The court imposed consecutive sentences of one year for each of the three prior prison term enhancements for a total prison term of seven years.³ Appellant filed a timely notice of appeal and obtained a certificate of probable cause.

APPELLATE COURT REVIEW

Appellant's appointed appellate counsel has filed an opening brief that summarizes the pertinent facts, raises no issues, and requests this court to review the record independently. (*People v. Wende* (1979) 25 Cal.3d 436.) The opening brief also includes the declaration of appellate counsel indicating that appellant was advised he could file his own brief with this court. By letter on October 26, 2009, we invited appellant to submit additional briefing. To date, he has not done so.

After independent review of the record, we have concluded there are no reasonably arguable legal or factual issues.⁴

³ The court imposed concurrent sentences for each of appellant's misdemeanor convictions.

⁴ The Legislature amended section 4019 effective January 25, 2010, to provide that any person who is not required to register as a sex offender, and is not being committed to prison for, or has not suffered a prior conviction of, a serious felony as defined in section 1192.7 or a violent felony as defined in section 667.5, subdivision (c), may accrue conduct credit at the rate of four days for every four days of presentence custody.

This court, in its "Order Regarding Penal Code section 4019 Amendment Supplemental Briefing" of February 11, 2010, ordered that in pending appeals in which the appellant is arguably entitled to additional conduct credit under the amendment, we would deem raised, without additional briefing, the contention that prospective-only application of the amendment violates the intent of the Legislature and equal protection principles. We deem these contentions raised here.

We explained in the recent case of *People v. Rodriguez* (Mar. 1, 2010, F057533) __ Cal.App.4th __ [pp. 5-12].), however, that the amendment is not presumed to operate retroactively and does not violate equal protection under law. Appellant is, therefore, not entitled to additional conduct credit under the amendment to section 4019. Furthermore,

DISPOSITION

The judgment is affirmed.

appellant admitted a prior serious felony conviction for first degree burglary (§ 1192.7, subd. (c)(18)) which would disqualify him from receiving presentence credits even if they could be applied retroactively.